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JUN 30 2009

U.S. DISTRICT COURT
BAY CITY, MICHIGAN

UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION

3 UNITED STATES OF AMERICA,

4 Plaintiff, NO. 08-20060

5 v SENTENCING

6 JAMES ALLEN MOORE,

7 Defendant.

8 _____/

9 Proceedings had in the above entitled matter
10 before the Honorable Thomas L. Ludington, United States
11 District Judge, at Bay City, Michigan, on the 26th day of
12 August, 2008.

13 APPEARANCES:

14 TERRENCE BERG, UNITED STATES ATTORNEY

15 BY: BARBARA TANASE, AUSA,

16 Appearing on behalf of the Government.

17 JOAN E. MORGAN, ESQ,

18 Appearing on behalf of the Defendant.

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1 (Case called)

2 MS. TANASE: Good afternoon, your Honor,
3 Barbara Tanase on behalf of the United States.

4 MS. MORGAN: May it please the court, Joan
5 Morgan, I'm here on behalf of James Moore who's next to me.

6 THE COURT: Good afternoon, Ms. Morgan, and
7 good afternoon Mr. Moore.

8 We are assembled for a sentencing hearing
9 for Mr. Moore. My records would reflect the fact that we
10 have accepted a guilty plea from the defendant to two
11 counts on May 15 of this past year. They were the offense
12 of distribution of five grams or more of cocaine base; and
13 count 2, the offense of distribution of 50 grams or more of
14 cocaine base.

15 Count 1 carries specific sentencing
16 implications. The court is obligated, with the exception
17 of certain circumstances, to impose a sentence with respect
18 to count 1 of no less than five years and no greater than
19 four years of custody.

20 The court must impose a term of at least
21 four years supervised release and is authorized to impose a
22 fine of up to \$2 million.

23 Count 2 carries similar implication with the
24 exception of certain circumstances, there's a mandatory
25 minimum of ten years up to life in custody. The statute

1 provides for at least five years of supervised release and
2 authorizes the court to impose a fine of up to \$4 million.

3 Mr. Wright prepared a presentence report.
4 It has been furnished to counsel, indeed, I've had a chance
5 to spend a little bit of time with a number of the issues
6 that had been raised by counsel in chambers.

7 But let's begin, Ms. Morgan, do we have any
8 additions or corrections to the report independent of
9 discussion we had concerning the guideline sentencing
10 issues?

11 MS. MORGAN: We don't. Thank you.

12 THE COURT: You have filed a sentencing
13 memorandum, objections were also noted to the report itself
14 with respect to the relevant questions.

15 We have spent sometime on the law as it
16 would govern the circumstances surrounding the weapon that
17 would have been identified on the date of the search of the
18 defendant's residence, which would have been approximately
19 four months after the transactions, that was the basis for
20 the conviction and to which he had entered his plea.

21 Located at the time were trace elements of
22 cocaine base, but no dispositive quantities. On the other
23 hand, there was evidence of trafficking, including evidence
24 of the fact of scales and related sorts of materials as I
25 recall.

1 We are left with two questions. The first
2 is the gentleman's eligibility for relief under the safety
3 valve, and the question of whether or not he can prove by a
4 preponderance of the evidence that he did not possess a
5 firearm in connection with the offense, on one hand.

6 And on the other, whether or not he must
7 receive two points in addition to his base level offense
8 under 2D1B1 because the defendant possessed a firearm
9 during the commission of a drug trafficking offense.

10 As we have talked about, he must prove his
11 eligibility under the safety valve by a preponderance of
12 the evidence. Under the application notes for 2D1, the
13 government maintains the threshold obligation to
14 demonstrate by a preponderance of the evidence the
15 defendant possessed the firearm.

16 The defendant may rebut the presumption
17 only, however, by demonstrating that it is clearly
18 improbable that the firearm was connected to the offense.

19 Counsel and I have spent sometime reviewing
20 the facts, reviewing the law as well as some of the case
21 authority that would apply and I'd like to at least take up
22 counsel's arguments as they may apply.

23 Ms. Morgan, would you like to lead? You
24 made the objections and we have the memorandum.

25 MS. MORGAN: Yes, sir, I would. Thank you.

1 I'd like to indicate that my argument is essentially as
2 follows That on two occasions in October 2007, the
3 government through an informant purchased cocaine base from
4 Mr. Moore. Both of those sales occurred at his places of
5 employment. One was at ABC Warehouse and the other one was
6 at a store owned by his mother, a clothing store in
7 Saginaw.

8 And both of those events were videotaped by
9 the government. There is nothing in any of the reports or
10 the videotape or the audio portion of that recording which
11 indicates anything relating to a weapon, either the rifle
12 that was found under the bed at the Maplewood address in
13 Saginaw or any other weapon.

14 So the facts show that there is no evidence
15 that a weapon was present or possessed in the October 2007
16 sale from Mr. Moore to the informant.

17 Four months later when the government
18 executed its search warrants at the Maplewood address and
19 many other locations, they were all executed relatively
20 simultaneously, a loaded rifle in a case was located under
21 Mr. Moore's bed in his bedroom.

22 My argument is that it is clearly improbable
23 that that gun was used during the October 2007 offenses. I
24 acknowledge that items were seized from the kitchen of that
25 house which indicates that at some point in time, it

1 appears that there was packaging of cocaine base, but,
2 again, the issue here is that there's nothing to show any
3 temporal proximity between those packaging materials and
4 the weapon that was found under his bed.

5 I indicated to the court in chambers that
6 were Mr. Moore to testify, he would testify that rifle was
7 under his bed because he had four or five occasions where
8 that house had been broken into which resulted in him
9 having an alarm system put into the house.

10 And when the agents executed the search
11 warrant on February 20, as when people broke in before
12 February 20 during the year or so that he had been renting
13 that house, Mr. Moore drove over to the Maplewood house; he
14 had not stayed there the night before. He was detained and
15 readily admitted that the gun was his.

16 He also indicated to the agents that he had
17 not been in or lived in that house for several months. The
18 identification that was taken from him showed that he lived
19 at his mother's home on North Michigan Avenue in Saginaw,
20 and he had been renting that house for, again,
21 approximately a year, living there at various times.

22 But I think the facts of this case clearly
23 meet the threshold for the safety valve, and, in addition
24 to that, although the case law, I think, sets a high bar,
25 it also shows that it is clearly improbable that the gun

1 was used during the offense based, in large part, on my
2 argument that there is no temporal proximity between the
3 events of October 2007 and the execution of the search
4 warrant.

5 But also the other facts: The type of gun
6 which, in this case, was a rifle -- I'm sorry, it was a
7 shotgun -- is not the typical weapon that is used during a
8 drug trafficking offense. It was legally owned by Mr.
9 Moore. He had a legitimate explanation for it and that is
10 that it was based on his need for home protection because
11 the house had been broken into on so many occasions during
12 the previous year after it had been burgled.

13 So based on all of that, I would ask the
14 court to, number one, not add the two point enhancement for
15 the gun and, in addition, find that Mr. Moore is eligible
16 for the safety valve two point reduction.

17 THE COURT: Indeed, excusing the statutory
18 minimum?

19 MS. MORGAN: Yes.

20 THE COURT: Ms. Tanase, does the government
21 have anything?

22 MS. TANASE: Yes, your Honor, I'd like to
23 start by discussing the specific offense characteristic in
24 2D1.1B1. Under the guideline D1.3, the court is to
25 consider all relevant conduct in determining whether or not

1 a specific offense characteristic should be applied, and
2 that includes all conduct that is part of a same course of
3 conduct or common scheme or plan as the offense of
4 conviction.

5 So in this case, your Honor, I would submit
6 that the fact that when the police executed a search
7 warrant at Mr. Moore's home on Maplewood, they found
8 evidence of drug trafficking activity, that is wrappers
9 containing residue, scales containing cocaine residue,
10 cutting agents, razors that would be used to cut up and
11 package crack cocaine as well as finding similar items at
12 his place of business, that is Inositol which is used to
13 cut cocaine -- excuse me -- manufacture crack cocaine as
14 well as other items that would be used to package cocaine.

15 That's part of the same course of conduct
16 for which Mr. Moore has pled guilty, therefore, whatever is
17 found in connection with those activities should be
18 considered in whether or not to apply this specific offense
19 characteristic.

20 In this case, 2D1.1 adds two points to the
21 offense level if a dangerous weapon was possessed. There's
22 no dispute that the house on Maplewood was Mr. Moore's,
23 that his gun was there, that it was loaded, it was a
24 shotgun and indeed it was in close proximity with the drug
25 trafficking items that I discussed earlier.

1 Therefore, under application note 3, I
2 believe the government has borne its burden of proving a
3 firearm was present. That's all we need to prove before
4 the defendant has the burden of showing that it was clearly
5 improbable that it was connected to the offense of drug
6 trafficking.

7 In this case, I know it's a shotgun, Ms.
8 Morgan says it's not the typical type of gun that's carried
9 on a drug sale, and that may be correct. But it's
10 certainly a loaded shotgun and could be used to protect
11 drugs that were in the home and waiting there to be sold or
12 wherever you're doing, manufacturing and distribution,
13 packaging activity.

14 Therefore, I believe the government has
15 borne its burden of proving that 2D1.1 applies and the
16 defendant has failed to rebut that by showing it's clearly
17 improbable.

18 I do believe the gun probably was there for
19 self protection. Not only self protection, but also
20 protection of Mr. Moore's drugs.

21 With respect to the safety valve under
22 5C1.2, again, the court should look -- it needs to look to
23 determine whether or not the defendant has proven by a
24 preponderance of the evidence that he did not possess a
25 firearm or other dangerous weapon in connection with the

1 offense.

2 The offense, again, is defined under
3 application note 3 to include all relevant conduct, that is
4 all conduct that is part of the same course of conduct or a
5 common scheme or plan.

6 Once again, the government would submit that
7 evidence of drug trafficking was found both at Mr. Moore's
8 home and his place of business, and that he admits having
9 possessed that firearm and that, therefore, he's unable to
10 show by a preponderance of evidence that -- and the firearm
11 was, in fact, in close proximity to the drug trafficking
12 paraphernalia and residue that was found in his home, it
13 was loaded, it is the type of weapon that would be used to
14 protect those kinds of activities. And the government
15 believes Mr. Moore has failed to show by a preponderance of
16 evidence that the firearm was not connected to the
17 offenses, that is when we look at the course of conduct.

18 Thank you, your Honor.

19 THE COURT: Thank you. I would note that in
20 conjunction with our review of the application of the two
21 variables that have been the subject of our discussion,
22 both the government as well as the defense are satisfied
23 that the relevant factual information is largely
24 uncontested. There's been no request at this point for an
25 evidentiary hearing. You would confirm that, correct?

1 MS. TANASE: That's correct, your Honor.

2 MS. MORGAN: I agree, yes.

3 THE COURT: I also agree. As I think
4 counsel have pointed out in trying to resolve the somewhat
5 unusual set of circumstances, the operative language for
6 the safety valve utilizes the language in connection with
7 the offense, whereas the 2D1 standard addresses the
8 question of commission of a drug trafficking offense,
9 which, indeed, sets up the most unusual set of facts that
10 bring us here today.

11 The first of which is the two offenses of
12 conviction, drug trafficking offenses, took place some four
13 months in time before the search warrant was executed. To
14 be sure, the search turned up lots of evidence of drug
15 trafficking as it's outlined in paragraph 19, to be sure,
16 evidence of materials that would have been used to cook the
17 powder cocaine in order to, indeed, manufacture cocaine
18 base.

19 We found, according to paragraph 19, a
20 mobile telephone, a memory card with a drive along with
21 various paperwork that would support the notion that there
22 were purchasers and sellers, baking soda, a relatively
23 commonly used material for the creation of cocaine base
24 from the powder; the razor blades, plastic trays, along
25 with baggies and lots of other evidence of a distribution

1 operation if not, indeed, manufacture.

2 The court's conclusion is that the gentleman
3 is eligible for the safety valve insofar as, on the basis
4 of what I would view as the preponderance of evidence, he
5 did not possess a firearm in connection with the offense.
6 In part, because of the chronological set of circumstances,
7 the four month period of time, at a minimum.

8 I do, however, believe that he is eligible
9 for the two point addition as a result of the fact, in
10 part, of the burden of proof, the 2D1 standard necessarily
11 means that once the government has met the presumption, the
12 defendant must rebut it by clear -- to demonstrate it is
13 clearly improbable that the firearm was connected to the
14 offense. Clearly the evidence of the trafficking makes
15 that a difficult burden for the defendant to meet, and I do
16 not believe does meet it on the basis of the uncontested
17 matters of fact.

18 That would leave us, noting the objections
19 of both the government as well as the defense, I believe,
20 with a guideline range of 87 to 108, and I'd like to
21 confirm that with counsel.

22 Are we in agreement, Ms. Tanase?

23 MS. TANASE: Yes, your Honor.

24 MS. MORGAN: Yes, thank you.

25 THE COURT: With that understanding, if you

1 would like to offer any words or elocution on behalf of the
2 defendant, please.

3 MS. MORGAN: Yes, that's correct, I would
4 like to. Mr. Moore recently had his 30th birthday. And
5 his is a situation of a young man who had and has, I think,
6 potential to do good things and to accomplish good things.
7 He's someone who started using drugs, and as a result sold
8 drugs and went awry.

9 He, however, does have verifiable events in
10 his life which I think support my contention that a
11 sentence either at the bottom end or even below the
12 guidelines would be more appropriate than one at the top of
13 the guideline range.

14 I'd indicate, first of all, that he did
15 serve in the United States Army, receiving an honorable
16 discharge. We provided his armed services records to
17 probation. They were positive. They indicated a number of
18 honors that he received and the fact that he was part of
19 the peace keeping forces in both Bosnia and Kosovo.

20 After that, and I do want to address this
21 because it was upsetting to me when I read it in the
22 presentence report, he worked at a number of security type
23 jobs. He was a private security guard. He worked for the
24 juvenile authorities in Kent County then he worked as a
25 corrections officer in the Michigan Department of

1 Corrections. And although I have in my possession his
2 entire personnel file from the Department of Corrections, I
3 will represent to the court there is nothing in there that
4 indicates anything about any sort of drug investigation or
5 anything which is noted in the presentence report.
6 Apparently someone put that in his file, but this is a man
7 who was employed with a satisfy performance as a
8 corrections officer.

9 And his mother who is present in the
10 courtroom was diagnosed with cancer. Mr. Moore resigned
11 his position and was never investigated, that he was aware
12 of. He was never charged. There was simply no indication
13 of anything relating to a drug investigation which
14 apparently someone communicated to probation.

15 So he wants to make clear that that service
16 to the department of corrections was done honorably and in
17 a satisfactory manner.

18 He did get married and divorced. He has a
19 six year old son. He has had constant communication with
20 his son and has a good relationship with his son as well as
21 with his baby daughter.

22 He has remained employed. He has attended
23 college and even attended the spring semester while he was
24 doing very well under the supervision of pretrial services.
25 So he is somebody who is able to perform and achieve, in

1 my experience.

2 Something he has asked me to make a request
3 of the court is relatively unusual, and that is he is
4 asking the court to recommend to the Bureau of Prisons that
5 he be placed in the comprehensive substance abuse program
6 while he is incarcerated, even though he knows that it will
7 not result in a reduction in his sentence because of the
8 firearm. That's a Bureau of Prisons policy.

9 Mr. Moore was -- he and I discussed that,
10 and normally when I discuss that with a client, their
11 desire to engage in a substance abuse program disappears
12 when they hear it will not result in a sentence benefit to
13 them. But that's not true of Mr. Moore, he's still
14 desirous of obtaining substance abuse treatment during his
15 incarceration.

16 He has also asked the court to recommend to
17 Bureau of Prisons that he be designated to the correctional
18 facility at Yorktown, South Dakota. So I make that
19 request.

20 I had difficulty, you know, when the
21 guidelines were mandatory; I have difficulty now when
22 they're only advisory because it's hard for me to ascertain
23 in many of these cases what's the benefit of having someone
24 incarcerated for, in this case, for example, nine years
25 instead of eight years or eight years instead of seven

1 years?

2 From my viewpoint, if there is a benefit to
3 the inmate, it is, at best, incremental. If there is a
4 benefit to society, it's a very expensive benefit in terms
5 of the costs of keeping someone incarcerated versus giving
6 them a chance in society.

7 My plea to the court is that Mr. Moore has
8 shown that he has an ability, I believe, if he's drug free
9 to be a productive member of society and, therefore, I'm
10 asking that you consider sentencing him at the bottom of
11 the guidelines range or perhaps below. Thank you.

12 THE COURT: I thank you for your remarks,
13 ma'am.

14 Mr. Moore, is there anything you would like
15 to add to Ms. Morgan's remarks on your behalf?

16 RESPONDENT: Good afternoon, your Honor.
17 Today's one of the most sullen days of my life. This is
18 the beginning of the end to a chapter of my life. I would
19 like to say, first of all, I apologize to my family for the
20 hurt and embarrassment that I've caused during this time.
21 I accept full responsibility for the crimes that took place
22 in October.

23 I did choose to make bad decisions in my
24 life, and I could have avoided them. But throughout all
25 this life changing experience, I have learned a lot about

1 myself. And when I was serving in the United States Army I
2 learned a lot of things. What sticks out in my head the
3 most is integrity. I lost my integrity when I began to use
4 drugs and then sold them to pay for my habit.

5 I know the federal government is less
6 lenient on you if you cooperate and give substantial
7 information on a person or persons, but is that what this
8 country was built on? While serving in Bosnia and Kosovo I
9 took an oath upon entering the U.S. Army; that oath states
10 if I become a prisoner of war I will keep faith with my
11 fellow prisoners. When questioned, I am required to give
12 name, rank, service number and date of birth. I will evade
13 answering further questions to the utmost of my ability.

14 I will never forget I'm an American. I have
15 forfeited freedom. I'm responsible for my actions and I'm
16 dedicated to the principles which made my country free. I
17 trust in God and the United States of America.

18 Upon exiting the military I took this oath
19 with me. I'm standing before you to say that I should not
20 serve -- I am not standing before you to say that I should
21 not serve time for the offenses that I committed.

22 No, your Honor, I'm asking for a little
23 leniency in sentence. I know you have read my presentence
24 investigation and report. I do not have a long criminal
25 records. I was a positive person within my community and a

1 good father to my two children.

2 Even while on bond, I continued to be
3 productive citizen by attending college and taking a job
4 while on tether and following all the guidelines of my
5 bond.

6 So I'm asking, your Honor, if you could find
7 it in your heart and take all the factors I have named in
8 this statement into consideration in your sentencing me
9 today. And whatever sentence you give me today I will be at
10 ease with it because I do believe God has a plan for me
11 already.

12 THE COURT: I appreciate your remarks, sir.
13 Ms. Tanase, any remarks on behalf of the
14 government?

15 MS. TANASE: No, your Honor. Thank you.

16 THE COURT: The case has been well argued
17 quite apart from the technical considerations with respect
18 to the weapons. The gentleman that is present before us, I
19 think, has the capability of living a far different life
20 than he has. It is my sincere hope that, at the most, the
21 drug trafficking activities that brings him here today are
22 a departure, one that he can correct. One that we will
23 give him every bit of assistance the Bureau of Prisons has
24 the capacity to address.

25 Quite apart from the sentencing guidelines

1 that we have given some attention to today, the court is
2 aware of and has considered the factors outlined
3 statutorily in Title 18 Section 3553 A in consideration of
4 the sentence.

5 As a result, it is the sentence of the court
6 that the defendant will be committed to the custody of the
7 United States Bureau of Prisons for a term of 87 months on
8 count 1, and 87 months on count 2. The sentence to be
9 imposed will be served concurrently.

10 We will recommend that the defendant be
11 designated to an institution with a comprehensive drug
12 treatment program.

13 We will recommend to the Bureau of Prisons
14 that the consideration be given to the Yorktown, South
15 Dakota facility, and they will, in each of those two
16 requests, make the decision.

17 A \$100 special assessment fee that is
18 statutorily required is ordered to be paid for a total of
19 \$200, that is \$100 with respect to each of the two counts.

20 While the gentleman is in custody he is to
21 participate in an inmate financial responsibility program.
22 The court will reflect for the record our awareness of the
23 IFRP payment schedules and we order the defendant's
24 compliance with those schedules.

25 We will waive the imposition of fines, costs

1 of incarceration and costs of supervision. Those will be
2 borne by the public due to the defendant's lack of
3 resources.

4 The defendant is to refrain from any
5 unlawful use of a controlled substance. He shall submit to
6 one drug test within 15 days of his release on supervision
7 and at least two periodic drug tests thereafter as may be
8 directed by his probation officer.

9 Upon his release from custody, he is to be
10 placed on supervised release for a term of five years with
11 respect to count 1 and five years with respect to count 2.
12 Again, each of the sentences to be served concurrently.

13 Within 72 hours of his release from the
14 Bureau of Prisons, the gentleman is to report in person to
15 the probation department in the district where he is
16 released.

17 While he's on supervision, he is to abide by
18 the standard conditions of supervised release that have
19 been established by the United States District Court for
20 the Eastern District of Michigan, and we would also order
21 his compliance with the following additional special
22 conditions:

23 He is to participate in a program approved
24 by the probation department for substance abuse, which may
25 include testing to determine if he's reverted to the use of

1 drugs or alcohol, if that is necessary.

2 He shall not use or possess alcohol in any
3 consumable form, nor shall he be in the social company of
4 any person that he knows to be in possession of alcohol or
5 illegal drugs, or visibly affected by them.

6 He shall not be found at anyplace that
7 serves alcohol for consumption on the premises with the
8 exception of restaurants.

9 He shall not incur any new credit charges or
10 open any additional lines of credit without the approval of
11 his probation officer unless he's in full compliance with
12 his payment schedule.

13 He shall provide his probation officer
14 access to any requested financial information, and he shall
15 be lawfully and gainfully employed on a full-time basis, or
16 he shall be seeking such lawful gainful employment on a
17 full-time basis.

18 The full-time will be defined as 35 hours
19 per week. In the event he has part-time employment, he
20 shall devote the balance of his 35 hours per week to his
21 efforts in seeking additional employment.

22 Finally, and importantly, he shall establish
23 a plan with the Shiawassee and Saginaw County Friends of
24 the Court to satisfy the child support arrearage with each
25 agency and to abide by the plan so he undertakes and

1 completes his responsibility for his support and care of
2 his children.

3 Any questions or objections to the sentence
4 being imposed by the court, Ms. Morgan?

5 MS. MORGAN: No. I do have one additional
6 request, and that is that he be permitted to report to the
7 designated institution.

8 THE COURT: Does the government have a point
9 of view?

10 MS. TANASE: Your Honor, I believe by
11 statute Mr. Moore probably should have been taken into
12 custody at the time he entered his guilty plea and so we
13 would oppose self surrender.

14 THE COURT: I believe the mandatory criteria
15 of Section 3143 applies. I agree with the government that,
16 indeed, he should have been ordered into custody at the
17 time of his plea.

18 Does the government have any objections or
19 questions concerning the sentence imposed?

20 MS. TANASE: No, your Honor. Thank you.

21 THE COURT: One final point, from the
22 court's perspective, with respect to the gentleman's
23 entitlement to appellate review. Ms. Morgan, will you be
24 representing the gentleman through the process, getting his
25 application filed if he wishes to request appellate review

1 of the decisions that have been made during the course of
2 the case?

3 MS. MORGAN: Yes, I will.

4 And to confirm, Mr. Moore, if you wish to
5 ask to have the Court of Appeals review the decisions we
6 have made in the case, you need to make sure that those
7 papers are completed within ten days of today's date. Ms.
8 Morgan has indicated she will continue her representation
9 of you through that process if you choose to do so. Do you
10 understand that, sir?

11 RESPONDENT: Yes, your Honor.

12 THE COURT: Very well. The gentleman is to
13 surrender to the custody of the marshal.

14 We will also confirm the fact owe Ms. Morgan
15 will represent the gentleman through the commencement of
16 the appellate process.

17 MS. MORGAN: Judge, can I ask a question
18 about 3143 because I'm just unfamiliar with it? If there
19 -- I don't know how to ask it -- is there any -- will the
20 court consider any arguments I will make relating to self
21 surrender?

22 THE COURT: Indeed, I believe it follows
23 from his conviction of the offense. There's a statutory
24 presumption of --

25 MS. MORGAN: I understand there's a

1 presumption. But I guess what I'm asking, because I have
2 never had this situation where someone who's done so well
3 under pretrial supervision was required to go into custody
4 at sentencing.

5 I had plenty of clients who have faced
6 similar or greater sentences than Mr. Moore is facing.
7 I feel a little neglectful if the statute is mandatory
8 because I certainly would have advised him of that, and I
9 didn't. I assumed because he has done so well under
10 pretrial supervision that --

11 THE COURT: Ms. Morgan?

12 MS. MORGAN: -- he would be able to
13 continue.

14 THE COURT: Why don't we give you an
15 opportunity to just double check the statute so you can at
16 least give attention to that question as well as to review
17 it with your client.

18 MS. MORGAN: Okay.

19 THE COURT: I need to move on to an
20 additional case.

21 Ms. Tanase, are you able to furnish Ms.
22 Morgan with a copy, at least, of the statute?

23 MS. TANASE: Yes.

24 THE COURT: And we can proceed to Mr.
25 Hendrick's case. The court sees Mr. Perry is present.

1 (Recess taken)

2 THE COURT: Is Ms. Morgan present?

3 MS. MORGAN: I'm sorry?

4 THE COURT: I simply am recalling the case.
5 We had earlier provided you an opportunity to at least
6 review the statute. It is fair to say, as I think you
7 pointed out rather extensively, and with some emphasis,
8 that you are not frequented with the application of the
9 statute regularly in the Southern Division.

10 MS. MORGAN: Not frequent is incorrect. It
11 would be correct to say I've never had that statute used to
12 have my client's detention begin at sentencing when they
13 have been fully compliant with pretrial supervision as Mr.
14 Moore has been.

15 And I've practiced in the Southern Division
16 for 24 years now, plus the two years I was a law clerk. So
17 if there's noncompliance, that's a different issue. But I
18 simply wanted to express to the court that I had told Mr.
19 Moore that he would have three or four weeks before he was
20 designated and needed to self report. As a result of that,
21 he put off -- not put off -- but scheduled some medical
22 procedures, including getting his braces removed in about,
23 I think, two weeks based on my information to him that he
24 would not be locked up today.

25 So I feel badly that I misinformed him.

1 THE COURT: Let me indicate that you're not
2 the first practitioner that I've confronted with the same
3 issue.

4 I presume you would at least agree with us
5 that upon review of the statutory section that we really
6 aren't extended any discretion in the matter.

7 MS. MORGAN: It appears that that is a true
8 statement.

9 THE COURT: Ms. Tanase, is there anything
10 you wish to cover?

11 MS. TANASE: Just, your Honor, I always
12 bring this particular statute to the court's attention
13 simply because it is mandatory. The government has an
14 obligation to enforce the law, not because I have anything
15 against Mr. Moore and him having an opportunity to get his
16 medical problems attended to before surrendering.

17 THE COURT: I appreciate that. Mr. Moore,
18 if you please, make yourself available to the marshals.

19 RESPONDENT: Okay.

20 THE COURT: Thank you. The record's
21 closed.

22 (Proceedings adjourned)

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3 I, Charlene McLoughlin, United States Court
4 Reporter, do hereby certify that I electronically recorded
5 in shorthand the proceedings had in the above-entitled
6 matter and that the foregoing pages are a full, true and
7 accurate transcription of said proceedings.

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11 s/ Charlene McLoughlin

12 CHARLENE McLOUGHLIN, CM CP CSR

13 UNITED STATES COURT REPORTER.

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